

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to day habilitation

The Human Services Department hereby amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

The purpose of these amendments is to implement guidance provided from the Centers for Medicare and Medicaid Services (CMS), which clarifies that day habilitation services may provide a pathway to employment for the home- and community-based services (HCBS) day habilitation services provided through the HCBS intellectual disabilities (ID) waiver and state plan HCBS Habilitation Program for persons with chronic mental illness. These amendments clarify the activities provided through day habilitation to assist members in participating in the community, developing social roles and responsibilities, and increasing independence and the potential for employment. The Department convened a work group to address the requirements for providers and scope of services.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 9, 2020, as **ARC 5166C**.

The Department received comments from three organizations.

Comment 1: The Department received one comment on subparagraphs 77.25(7)“b”(3) and 77.25(7)“b”(4), regarding direct support staff qualifications.

The suggestion was made that clarification be added to the rule regarding the phrase “or other nationally recognized training curriculum.”

Department response: The phrase “or other nationally recognized training curriculum” is intended to allow providers the flexibility to use another preferred nationally recognized training curriculum for day habilitation services as an alternative to those day habilitation training courses available through DirectCourse or Relias.

Comment 2: The Department received one comment on subparagraph 78.27(8)“a”(7), regarding participating in adult learning opportunities.

Previously, educational opportunities and supports for these programs have been a nonbillable activity. The request was made to further define adult learning activities.

Department response: Learning opportunities for adults do not include those education and related services mandated under the Individuals with Disabilities Education Act (IDEA). Adult learning opportunities include opportunities to participate in classes or other activities consistent with the individual’s preferences, choices, and interests such as computers, social media, cooking, gardening, creative writing, music and art. The IDEA requires the provision of comprehensive education and related services to children and youth with disabilities who are enrolled in special education programs. When a state proposes to include education services in its waiver, CMS will review the proposed waiver coverage to ensure that it does not provide for payment of services that are mandated under the IDEA.

Comment 3: One provider commented on paragraph 78.27(8)“b,” regarding the family training option.

The paragraph states that day habilitation services may include training families in treatment and support methodologies or in the care and use of equipment and that family training may be provided in the member’s home. The provider asked the Department to clarify whether the training will need to occur with the member present for this to be a direct and billable service.

Department response: The family training option is intended to be provided to the member and the member’s family in treatment and support methodologies or in the care and use of equipment. Because day habilitation is a direct service provided to the member, the member must be present during service delivery.

Comment 4: One provider commented on paragraph 78.27(8)“h,” regarding transportation. The paragraph states that when transportation is provided to the day habilitation service location to the member’s home and from the day habilitation service location to the member’s home, the day habilitation provider may bill for the time spent transporting the member.

The provider asked the Department to clarify whether transportation can be billed as a direct service and asked, if so, can it be billed as a round trip or as a one-way trip.

Department response: Transportation provided to the member participating in day habilitation to transport the member to the day habilitation service location from the member’s home and back to the member’s home from the service location is billed as part of the day habilitation service delivery time and is not separately billed.

Comment 5: One provider commented on subparagraph 78.27(8)“i”(1), regarding exclusions of vocational or prevocational services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.) and which states that documentation that funding is not available to the individual for the service under these programs shall be maintained in the service plan of each member receiving day habilitation services.

The provider asked the Department to clarify in the final sentence as to the specific (case management or service provider) plan in which this documentation is to be maintained.

Department response: The documentation that funding is not available to the individual for the service must be maintained in the HCBS comprehensive person-centered service plan developed by the HCBS case manager or care coordinator for each member receiving the day habilitation service.

Comment 6: One provider expressed concern that the proposed amendments introduce additional training requirements without increasing the rates of reimbursement for the services. The provider stated a firm belief that ongoing education is imperative to both ensuring a high-level quality of service as well as supporting staff and noted, however, that when the rules were amended to increase the training requirements for supported employment, which mirrors the proposed requirement for day habilitation, the rates were adjusted to reflect the change. The provider stated that if rates are not increased in conjunction with this amendment, the additional cost of ongoing training will have to be absorbed in budgets already stretched thin and that current day habilitation rates are not sufficient in covering the cost of the service and staff compensation.

Department response: The amendments are not applicable to the reimbursement methodology for day habilitation services. The Department does not have the authority to increase day habilitation reimbursement rates at this time. To amend the reimbursement rates for day habilitation would require legislation. The reimbursement methodologies applied to implement the Employment Service Redesign for Prevocational and Supported Employment services were based on the adjustments being cost-neutral. The Prevocational and Small Group Supported Employment reimbursement rates were adjusted down in order to increase the reimbursement for Individual Supported Employment and Long Term Job Coaching and implement the additional provider qualifications and staff training requirements for Individual Supported Employment and Long Term Job Coaching. The Department makes assurances to CMS that providers are qualified to deliver the service, and the Department must demonstrate that it has designed and implemented an adequate system for assuring that all waiver services are provided by qualified providers. By adding the requirement that direct support staff providing day habilitation services complete at least nine and a half hours of training within the first six months of hire and

four hours of training annually thereafter, the State is demonstrating that day habilitation services are provided by qualified providers.

Comment 7: One provider stated the rule-making actions mirror the changes and efforts made by Iowa's Disability Employment Services Redesign Workgroup and that the same rate and methodology should also be utilized to support a high-quality funding system. The provider strongly recommended that the proposed rule-making actions include the following key elements, as utilized by the Employment Services Redesign Workgroup, to ensure successful funding at the individual and provider level: annual wage adjustments, employment, professional training and staff development, supervision, travel costs (mileage or alternative), nonbillable tasks, productivity adjustment, and billable hours.

Department response: Please see the response to Comment 6 above.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on November 9, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rules 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on February 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 77.25(7) as follows:

77.25(7) Day habilitation.

a. The following providers may provide day habilitation:

~~a.~~ (1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide services that qualify as day habilitation under 441—subrule 78.27(8).

~~b.~~ (2) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide other services and began providing services that qualify as day habilitation under 441—subrule 78.27(8) since the agency's last accreditation survey. The agency may provide day habilitation services until the current accreditation expires. When the current accreditation expires, the agency must qualify under ~~paragraph "a," "d," "g," or "h."~~ subparagraph 77.25(7) "a"(1), 77.25(7) "a"(4), or 77.25(7) "a"(7).

~~c.~~ (3) An agency that is not accredited by the Commission on Accreditation of Rehabilitation Facilities but has applied to the Commission within the last 12 months for accreditation to provide

services that qualify as day habilitation under 441—subrule 78.27(8). An agency that has not received accreditation within 12 months after application to the Commission is no longer a qualified provider.

~~d. (4)~~ An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

~~e. (5)~~ An agency that has applied to the Council on Quality and Leadership in Supports for People with Disabilities for accreditation within the last 12 months. An agency that has not received accreditation within 12 months after application to the Council is no longer a qualified provider.

~~f. (6)~~ An agency that is accredited under 441—Chapter 24 to provide day treatment or supported community living services.

~~g. An agency that is certified by the department to provide day habilitation services under the home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A).~~

~~h. (7)~~ An agency that is accredited by the International Center for Clubhouse Development.

~~i. (8)~~ An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

b. Direct support staff providing day habilitation services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent degree. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.

(2) A person providing direct support shall not be an immediate family member of the member.

(3) A person providing direct support shall, within six months of hire or within six months of February 1, 2021, complete at least 9.5 hours of training in supporting members in the activities listed in 701—paragraph 78.27(8) “a,” as offered through DirectCourse or Relias or other nationally recognized training curriculum.

(4) A person providing direct support shall annually complete 4 hours of continuing education in supporting members in the activities listed in 701—paragraph 78.27(8) “a,” as offered through DirectCourse or Relias or other nationally recognized training curriculum.

ITEM 2. Rescind subrule 77.37(27) and adopt the following **new** subrule in lieu thereof:

77.37(27) Day habilitation providers. Day habilitation services may be provided by agencies meeting the qualifications in subrule 77.25(7).

ITEM 3. Amend subrule 78.27(8) as follows:

78.27(8) Day habilitation. “Day habilitation” means services that provide opportunities and support for community inclusion and build interest in and develop skills for active participation in recreation, volunteerism and integrated community employment. Day habilitation provides assistance with acquisition, retention, or improvement of self-help, socialization, and adaptive skills community participation, and daily living skills.

a. Scope. Day habilitation activities and environments are designed to foster the acquisition of skills, appropriate positive social behavior, greater independence, and personal choice. Services focus on enabling supporting the member to participate in the community, develop social roles and relationships, and increase independence and the potential for employment. Services are designed to assist the member to attain or maintain the member’s maximum functional level and shall be coordinated with any physical, occupational, or speech therapies in the comprehensive service plan. Services may serve to reinforce skills or lessons taught in other settings. Services must enhance or support the member’s individual goals as identified in the member’s comprehensive service plan. Services may also provide wraparound support secondary to community employment. Day habilitation activities may include:

(1) Intellectual functioning; Identifying the member’s interests, preferences, skills, strengths and contributions,

(2) Physical and emotional health and development; Identifying the conditions and supports necessary for full community inclusion and the potential for competitive integrated employment,

(3) Language and communication development; Planning and coordination of the member’s individualized daily and weekly day habilitation schedule,

(4) Cognitive functioning; Developing skills and competencies necessary to pursue competitive integrated employment,

(5) Socialization and community integration; Participating in community activities related to hobbies, leisure, personal health, and wellness,

(6) Functional skill development; Participating in community activities related to cultural, civic, and religious interests,

(7) Behavior management; Participating in adult learning opportunities,

(8) Responsibility and self-direction; Participating in volunteer opportunities,

(9) Daily living activities; Training and education in self-advocacy and self-determination to support the member's ability to make informed choices about where to live, work, and recreate,

(10) Self-advocacy skills; or Assistance with behavior management and self-regulation,

(11) Mobility. Use of transportation and other community resources,

(12) Assistance with developing and maintaining natural relationships in the community,

(13) Assistance with identifying and using natural supports,

(14) Assistance with accessing financial literacy and benefits education,

(15) Other activities deemed necessary to assist the member with full participation in the community, developing social roles and relationships, and increasing independence and the potential for employment.

b. Family training option. Day habilitation services may include training families in treatment and support methodologies or in the care and use of equipment. Family training may be provided in the member's home. The unit of service is 15 minutes. The units of services payable are limited to a maximum of 40 units per month.

c. Expected outcome of service. The expected outcome of day habilitation services is active participation in the community in which the member lives, works, and recreates. Members are expected to have opportunities to interact with individuals without disabilities in the community, other than those providing direct services, to the same extent as individuals without disabilities.

d. Setting. Day habilitation shall take place in community-based, nonresidential settings separate from the member's residence. Family training may be provided in the member's home.

e. Duration. Day habilitation services shall be furnished for four or more hours per day on a regularly scheduled basis for one or more days per week or as specified in the member's comprehensive service plan. Meals provided as part of day habilitation shall not constitute a full nutritional regimen (three meals per day).

f. Unit of service. A unit of day habilitation is 15 minutes (up to 16 units per day) or a full day (4.25 to 8 hours).

g. Concurrent services. A member's comprehensive service plan may include two or more types of nonresidential habilitation services (e.g., day habilitation, individual supported employment, long-term job coaching, small-group supported employment, and prevocational services). However, more than one service may not be billed during the same period of time (e.g., the same hour).

h. Transportation. When transportation is provided to the day habilitation service location from the member's home and from the day habilitation service location to the member's home, the day habilitation provider may bill for the time spent transporting the member.

i. Exclusions. Day habilitation payment shall not be made for the following:

(1) Vocational or prevocational services. Services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available to the individual for the service under these programs shall be maintained in the service plan of each member receiving day habilitation services.

(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(3) Compensation to members for participating in day habilitation services.

(3) Support for members volunteering in for-profit organizations and businesses.

(4) Support for members volunteering to benefit the day habilitation service provider.

ITEM 4. Rescind subrule 78.41(14) and adopt the following new subrule in lieu thereof:
78.41(14) *Day habilitation*. Day habilitation services will be provided pursuant to subrule 78.27(8).

[Filed 11/10/20, effective 2/1/21]

[Published 12/2/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/20.